

**BEFORE THE
U.S. DEPARTMENT OF ENERGY
Washington, D.C. 20585**

In the Matter of:

Whirlpool Corporation
(refrigerators/refrigerator-freezers/freezers)

Case Number: 2013-SE-1420

Issued: April 11, 2014

AMENDED NOTICE OF PROPOSED CIVIL PENALTY

Number of alleged violations: **26,649**

Maximum possible assessment: **\$5,329,800**

Proposed civil penalty: **\$5,329,800**

The U.S. Department of Energy (“DOE”) Office of the General Counsel, Office of Enforcement, alleges that Whirlpool Corporation (“Whirlpool”) has violated certain provisions of the Energy Policy and Conservation Act, 42 U.S.C. § 6291 *et seq.* (“the Act”), and 10 C.F.R. Parts 429 and 430.

Specifically, DOE alleges:

1. Whirlpool has manufactured and distributed in commerce in the United States refrigerator-freezer basic model 8TAR81 (“basic model 8TAR81”).
2. Since July 26, 2011, Whirlpool has distributed in commerce in the United States at least 26,649 units of basic model 8TAR81.
3. Basic model 8TAR81 is a “covered product” as defined in 10 C.F.R. § 430.2.
4. DOE’s testing of four units of basic model 8TAR81, conducted in accordance with DOE test procedures (*see* 10 C.F.R. Part 430, Subpart B, Appendix A1), and DOE’s calculations in accordance with 10 C.F.R. Part 429, Subpart C, Appendix A, demonstrated that basic model 8TAR81 does not comply with the federal standards set forth at 10 C.F.R. § 430.32(a).
5. Given the tested units’ measured volumes, their respective maximum permissible rates of energy consumption based upon the applicable energy conservation standard is 475, 474,

475, and 475 kilowatt-hours per year (kWh/yr).¹ Based on their performance during testing, the four units that DOE tested consumed energy at the rates of 505, 521, 540, and 493 kWh/yr; this is an average of eight percent in excess of the applicable energy conservation standard.

The following information is provided in question and answer format to help explain Whirlpool's legal obligations and options.

What do I do now?

DOE is offering to settle for the amount listed in paragraph III.2.a of the attached Compromise Agreement. To accept this settlement offer, you must submit the signed Compromise Agreement and then pay the fine within thirty (30) calendar days of the date of an Adopting Order adopting the Compromise Agreement.

If you do not choose to settle the case, DOE may seek the maximum penalty authorized by law. You have other options as described below.

What are my other options?

If you do **not** agree to DOE's settlement offer, then you must select Option 1 or Option 2 below within thirty (30) calendar days of the date of this Notice.

Option 1: You may elect to have DOE issue an order assessing a civil penalty. Failure to pay the assessed penalty within sixty (60) calendar days of the order assessing such penalty will result in referral of the case to a U.S. District Court for an order affirming the assessment of the civil penalty. The District Court has the authority to review the law and the facts *de novo*.

Option 2: You may elect to have DOE refer this matter to an Administrative Law Judge ("ALJ") for an agency hearing on the record. Upon a finding of violation by the ALJ, DOE will issue an order assessing a civil penalty. This order may be appealed to the appropriate U.S. Court of Appeals.

When must I respond?

You must submit the signed Compromise Agreement within ten (10) calendar days of the date of this Notice to pay the settlement amount that DOE has offered. If you do not wish to settle AND you wish to choose Option 1 as described above, you must notify DOE of your selection of Option 1 within thirty (30) calendar days of the date of this Notice. Otherwise, if you do not settle the case, DOE will refer the case to an ALJ as described in Option 2.

¹ Under 10 C.F.R. § 430.32(a), the maximum energy use, in kWh/yr, for a refrigerator-freezer in product class 3 is 276.0 plus the product of 9.80 and the total adjusted volume of the particular refrigerator freezer (9.80AV+276.0). Basic model 8TAR81 falls into product class 3 because it is a refrigerator-freezer with automatic defrost and a top-mounted freezer but without through-the-door ice service. See 10 C.F.R. § 430.32(a).

How should I submit my response?

To assure timely receipt, DOE strongly encourages you to submit your response by e-mail, fax, or an express delivery service. DOE accepts scanned images of signed documents (such as PDFs). Responses may be sent by any of the following methods:

By email to: douglas.rawald@hq.doe.gov
By fax to: (202) 586-3274
By private carrier to: Doug Rawald
Senior Trial Attorney (GC-32)
U.S. Department of Energy
1000 Independence Ave., SW
Washington, DC 20585

What happens if I fail to respond?

If you fail to respond within thirty (30) calendar days of the date of this Notice, or by the time of any extension granted by DOE, DOE will refer the case to an ALJ for a full administrative hearing (Option 2, above).

What should I include in my response?

- 1) If you wish to accept DOE's settlement offer, you should submit the signed Compromise Agreement. If you do not wish to accept DOE's settlement offer, you should specify if you wish to elect Option 1; otherwise, DOE will proceed with Option 2, as described above.
- 2) Provide your Taxpayer Identification Number (TIN). The Debt Collection Improvement Act ("DCIA") requires all federal agencies to obtain the TIN in any case that may give rise to a debt to the government.

How did DOE calculate the maximum possible assessment?

Federal law sets a maximum civil penalty for each unit of a covered product that does not meet an applicable energy or water conservation standard that is distributed in commerce in the United States. The maximum penalty is \$200 per unit. 10 C.F.R. § 429.120. DOE has calculated a maximum penalty of \$200 per unit for 26,649 units distributed in commerce in the United States beginning in July 26, 2011.

If you have any questions, please contact Doug Rawald via phone at (202) 586-6734 or email at douglas.rawald@hq.doe.gov.

Issued by:

/signed/

Laura L. Barhydt
Assistant General Counsel for
Enforcement